IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.909 OF 1994

Mukand Limited, a company incorporated under the Indian Companies Act, 1913, and having its registered office at 70, Lal Bahadur Shastri Marg, Kurla, Bombay 400 070. .... Petitioners

- Versus -

1. The Municipal Corporation for Greater Bombay, having its office at 1, Mahapalika Marg, Bombay 400 001.

2. The Assessor and Collector Municipal Corporation for Greater Bombay, and Assessment Section, 1, Collection Mahapalika Marg, Bombay 400 001.

3. The Assistant Assessor and Collector, Municipal Corporation for Greater Bombay, 'L' Ward, New Market Building, S.G. Barve Marg, Kurla (West), Bombay 400 070. .... Respondents

Ms Anjali Chandurkar with Shri Mustafa Motiwala i/b M/s. P.D.S. Legal for the Petitioners.

Shri A.Y. Sakhare, Senior Counsel, with Mrs. V.K. Khatu for the Respondents.

CORAM: R.M.S. KHANDEPARKAR & V.M. KANADE, JJ.

DATED: OCTOBER 17, 2005

ORAL JUDGMENT (Per V.M.Kanade, J.):

1. The petitioners by this petition are challenging the

demand notices issued by the respondent-Municipal Corporation for Greater Bombay pertaining to the period from April, 1974 to June, 1987 in respect of an aggregate sum of Rs.24,15,669/-. Few facts which are relevant for the purpose of deciding this petition are as under:-

2. The petitioners are a company incorporated under the provisions of the Companies Act, 1913. The respondent No.1 is the Municipal Corporation for Greater Bombay and respondent Nos.2 and 3 are the officers of respondent No.1-Corporation. The petitioners received demand notices on 11-2-1994 which were purportedly supplementary bills issued by the respondents demanding sewerage charges which were allegedly due from April, 1974 to June, 1987. These bills were purportedly raised under Rule 6 of the Water Charges Rules. By letter dated 5-3-1994 the petitioners informed the Assistant Assessor and Collector of the respondent-Corporation stating therein that they had already paid the water charges along with the relevant sewerage charges which were payable for the relevant period which were mentioned in the said demand notices. On 12-3-1994 two notices of demand were served on the petitioners which were issued under Sections 202 and 279(1) of the Bombay Municipal Corporation Act, 1888. By letter dated 22-3-1994 the petitioners sent a legal notice to the respondents stating therein, inter alia, that the bills

had been raised after an unreasonably long period of time and that the bills did not state the reasons as to why they had been issued after a lapse of such a long period of time. Thereafter, the present petition came to be filed by the petitioners for quashing the demand notices which have been issued by the respondents. After the petition was filed, initially reply dated 19-4-1994 was filed by the respondent-Corporation and in the said reply it was stated, inter alia, that pursuant to the letter which was received by the petitioners some time in the year 1992, the copy of which is annexed to the affidavit in reply filed by the Corporation, they had learnt that the petitioners, apart from availing the facility of water which was supplied to them by the Corporation, also had additionally used tube-wells and had not paid water charges for using the said tube-wells. In the said affidavit in reply, it was categorically stated that by raising the supplementary bills what was demanded was only the difference in the percentage of charges which were levied as the petitioners had already paid 50% of the sewerage charges and on account of use of the tube-wells or water wells, as per the rules they were liable to pay the water/sewerage charges at the rate of 75%. The petitioners have also filed affidavit in rejoinder to the said reply and for the first time the petitioners have come out with the case that they had applied for permission to construct the tube-wells in the year 1966

and that permission was granted by the Corporation. However, the copy of the permission has not been annexed to the affidavit in rejoinder. The fact that permission was obtained in the year 1966 or that the tube-wells existed in the premises of the petitioners' factory and/or company, admittedly, is not mentioned in the petition.

3. The learned counsel appearing on behalf of the petitioners strenuously urged before us that the respondent-Corporation was not entitled to charge sewerage charges for the period from 1974 to 1976 as the supplementary bills have been raised for the first time in the year 1994, almost after a lapse of 17 years and there was an unusual delay in issuing the said supplementary bills. It was submitted that though no period of limitation was prescribed under the Rules or the Act for raising additional and/or supplementary bills, such bills, at the highest, could have been raised within a reasonable period of time. In support of the said submission, the learned counsel relied on number of judgments of the Supreme Court, the first being in the matter of **State of Gujarat v. Patel Raghav Natha and others,** reported in AIR 1969 SC 1297. The learned counsel thereafter relied on the judgments of the Supreme Court in the cases of **Bharat Steel Tubes Ltd. and another v. State of Haryana and another,** reported in (1988) 3 SCC 478 and **Collector of Central**

Excise, Jaipur v. Raghuvar (India) Ltd., reported in (2000) 5 SCC 299. She submitted that on the point of limitation alone, the said supplementary bills were liable to be set aside. Shri A.Y. Sakhare, learned senior counsel appearing on behalf of the Corporation, on the other hand, submitted that the fact that the company was using tube-wells had been concealed by the petitioners and this was brought to the notice of the respondents only when a letter was addressed by the petitioners to the respondents in the year 1992 in which there was an admission on the part of the petitioners that they had constructed two tube-wells and soon thereafter the supplementary bills had been issued within a reasonable period of time. The learned counsel further submitted that as soon as the Corporation came to know that the petitioners had been using water supply through tube-wells for its sewerage purposes, the supplementary bills had been raised and therefore there was no question of delay in issuing those supplementary bills. He submitted that, however, there was no bar under the Act or the Rules to issue supplementary bills, particularly in cases where the Corporation had received information regarding the user of tube-wells or water wells.

4. As regards the first submission made by the learned counsel appearing for the Corporation, we are unable to accept the said submission as in the facts of the

present case it is clear that the petitioners had concealed the fact that they were using tube-wells and for the first time the Corporation had learnt about the user of the tube-wells by the petitioner in 1992. The affidavit in reply filed by the respondents dated 19-4-1994 reveals that the respondents were granted fixed supply of water through two pipelines of 3 feet x 4 feet. A dispute was raised by the petitioners about the user of the said water supply and it was contended that the petitioners were not using the full water supply which was allotted to them by the Corporation. During the correspondence which ensued as a result of this dispute, in one of the letters which is annexed at Exhibit-1 to the affidavit filed by the respondents dated 10-8-1992, the petitioners revealed that at the time of construction of the factory they had installed two tube-wells some time in the year 1952 and that one tube-well was not in use and that the other had a submersible pipeline. After this fact was brought to the notice of the Corporation, the Corporation made investigation and in the said investigation it was revealed that the petitioners were using two tube-wells. Though the petitioners in their affidavit in rejoinder, for the first time, have stated that permission to use the said tube-wells was granted in the year 1966, this permission has not been annexed to the petition or to the affidavit in rejoinder. In fact the petition itself is silent about the construction of the two tube-wells

by the petitioners and this fact for the first time has been pleaded in the affidavit in rejoinder which is filed by the petitioners. Apart from that, the correspondence dated 19-12-1992 which is annexed to the affidavit in reply filed by the Corporation reveals that application for regularisation of the tube-wells had been filed by the petitioners. This itself indicates that the case which is tried to be made out by the petitioners about the permission being granted for the use of the tube-wells in the year 1966 itself falls to the ground. The respondents further in their affidavit in reply have categorically stated that what they are demanding is only the difference in the levy of sewerage charges which is to the tune of 25% more than what the petitioners have paid during the relevant period. In their affidavit in reply the Corporation has stated that as per the rule if additional water is used by the assessee, he is liable to pay the sewerage charges at the rate of 75%. In the present case, the petitioners have paid sewerage charges at the rate of 50%. Shri A.Y. Sakhare, learned senior counsel appearing on behalf of the respondents, after taking instructions, has fairly conceded that the figures which are mentioned in the bills which are annexed to the petition reveal only the difference between the two charges which are levied. In view of the peculiar facts and circumstances of the case, we are of the view that there was no delay on the part of the Corporation in issuing the

supplementary bills. Though there is no dispute regarding the ratio of the judgments on which reliance is placed by the learned counsel appearing on behalf of the petitioners, in our view, the said ratio will not be applicable to the facts of the present case. In the present case, the respondents have stated in their reply that the petitioners had concealed the fact of using of additional water supply through the tube-wells which they had constructed without permission and during the course of the dispute which was raised by the petitioners, the Corporation had come to know about the existence of the tube-wells which were constructed by the petitioners and immediately thereafter the fresh supplementary bills had been issued. There can be no dispute or two opinions about the settled legal position that in cases where the period of limitation is not prescribed, the period of limitation would have to be construed to mean a reasonable period of time within which action can be initiated by the authorities. In all the above referred three cases on which reliance is placed by the petitioners, the ratio of the said judgments, in our view, will not apply to the facts of the present case.

5. The learned counsel appearing on behalf of the petitioners thereafter submitted that there was no basis whatsoever for demanding the additional sewerage charges for the period from April, 1974 to June, 1987 and that

the bills do not set out the reason for demanding the said amount mentioned in the bills and that the bills were issued mechanically. In our view, the said submission cannot be accepted as in the affidavit in reply the respondents have given reason as to why the supplementary bills had been issued. It is no doubt true that the demand notices which were issued by the respondents were issued under Section 202 as well as Section 279 of the Bombay Municipal Corporation Act, 1888. Section 202 of the said Act empowers the Corporation to issue a show cause notice demanding sewerage and/or water charges and gives reasonable time to the assessee to give his reply to such show cause notice. The demand notices, however, were issued after the supplementary bills were served on the petitioners on 11-2-1994. However, that by itself would not make the supplementary bills which were issued by the Corporation illegal as after the petition was filed, this Court was pleased to grant interim relief and was pleased to stay the operation of the demand notices which were issued by the Corporation. In view of the explanation afforded by the Corporation in the affidavit in reply, in our view, the submission which is made by the learned counsel appearing on behalf of the petitioners, cannot be accepted.

6. In the result, there is no substance in the submissions made by the learned counsel appearing on

behalf of the petitioners and hence the writ petition is dismissed. Interim relief stands vacated. Time is granted to the petitioners to pay the said bills within a period of twelve weeks. The writ petition is disposed of in above terms with no order as to costs.

7. Certified copy expedited.

(V.M. Kanade, J.) **(R.M.S. Khandeparkar, J.)**